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Contingent Legitimacy: Community Sanctions in Northern Ireland

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CONTINGENT LEGITIMACY – COMMUNITY SANCTIONS IN NORTHERN IRELAND

INTRODUCTION

The trajectory of community sanctions and measures in Northern Ireland shares some common characteristics with England and Wales with similar origins, in the form of court missionaries, and the same foundational legislation passed in the UK parliament - the *Probation of Offenders Act (1907)*. However, the development of community based sanctions and measures and the institutions that administered them in Northern Ireland were different for a number of reasons. From its earliest stages their contours have been shaped by the wider political context. This has included a strong focus on internal security following partition of the island of Ireland in the early part of the twentieth century and the impact of the violent 30-year civil and political conflict known as the 'Troubles' from the late 1960s into the late 1990s. The ongoing transition from conflict and the attention towards reform of the criminal justice system have also impacted on the role of the probation service. During this period there has been an increased focus on risk and public protection and an increase in the numbers of people under the Probation Board for Northern Ireland's (PBNI) care or supervision.

This chapter considers the legitimating discourses that have been drawn upon to support the use of community sanctions and measures in Northern Ireland over time. In the earliest stages redemption and reform were legitimating narratives. In the course of the political Conflict a community-based presence grounded on neutrality provided a powerful legitimating rationale in a context where State legitimacy and the role of criminal justice agencies in particular were highly problematic. In the period of transition from Conflict, public protection, claims of greater effectiveness and lower costs when compared with prison have been employed as rationales to advocate the use of community sanctions. These claims have been linked to an overarching aim of penal reductionism, particularly in relation to a government policy objective to reduce the use of short prison sentences.

As indicated by the title, this book explicitly addresses the concept of 'Community Punishment'. It is important to note that the term 'community punishment' bears a particular resonance in Northern Ireland, usually taken to refer to punishment beatings and attacks by paramilitary groups. Historically paramilitaries have been involved in 'policing' of local communities in the context of legitimacy deficits in State administered justice (Feenan, 2002; Monaghan, 2004). In the period since the ceasefires of the main paramilitary organisations (mid-1990s onwards), the numbers of punishment beatings and attacks has declined, but they continue to cause concern (PSNI 2014)¹. Perhaps for this reason in Northern Ireland (unlike in England & Wales), the concept of 'punishment in the community' has never found favour in relation to community sanctions and measures.

This chapter draws on a small amount of existing literature on the history of probation in Northern Ireland and primary research exploring the context of probation practice during the Troubles. It draws on an oral history of probation comprising interviews with 19 retired or serving probation officers and managers who had worked in the service in a period collectively spanning from 1969 to the present. Findings from the initial stages of this research were reported in Carr & Maruna (2012).²

EARLY YEARS – REDEMPTION AND THE 'FLEDGLING CHICK'

Previous accounts of the early years of probation in Northern Ireland describe a nascent and underdeveloped institution (O'Mahony and Chapman, 2007; Fulton and Parkhill 2009). In the first decades of the twentieth century probation officers were located primarily in the main urban centres – Belfast and Derry/Londonderry – and were drawn from the ranks of Christian missionary groups. Fulton and Parkhill's (2009) historical account records that in its early stages probation, as an alternative sanction to imprisonment, was used mainly for less serious offending and 'deserving

¹ During 2013/14 the police recorded 70 casualties as a result of paramilitary-style attacks. However, these are likely to be significant under-reports due to fears and/or poor relationships with the police (PSNI, 2014).

² Throughout the chapter this full set of interviews (n=19) are denoted Probation History Interviews (PHI) with a relevant interview number.

cases' – i.e. those who were considered by the Courts to be 'redeemable'³. This emphasis on redemption legitimized the alternative sanction, sitting well with the religious orientation and a focus on temperance. The influence of the temperance movement, which had attained widespread support in Ireland and transcended the dual traditions (Catholic and Protestant), meant that many cases referred to probation by the courts involved people whose offending was linked to alcohol use (Fulton and Webb, 2009).

Despite the introduction of the UK *Probation of Offenders Act (1907)*, in the early years probation services did not develop in the same fashion in Northern Ireland as in England and Wales. According to O'Mahony and Chapman (2007: 156):

...the early development of probation in Northern Ireland was hampered by a series of ineffective mechanisms that were put in place to establish the service, persistent problems over funding and a general lack of 'professional status' for the service or probation officers at the time.

Following partition of Ireland under the *Government of Ireland Act (1920)*, responsibility for criminal justice was devolved to the Northern Ireland parliament. However, as Fulton and Parkhill (2009) note, internal security was a preoccupation and a consideration of alternatives to prison or a penal-welfarist approach were not high on the agenda. In such circumstances: 'The fledgling probation chick was largely left to fend for itself' (Fulton and Parkhill, 2009: 15).

A government committee established to consider legislation in relation to children and young people following the enactment of the *Children and Young Persons Act (1933)* in England and Wales also examined the role of probation services.⁴ The *Lynn Committee (1938)* made recommendations for the development of the probation service in Northern Ireland including the expansion of its role; the development of specific training and for probation officers to be employed directly by the Ministry

³ Fulton and Parkhill's (2009) historical overview was undertaken to mark the centenary of the passage of the foundational legislation and the twenty-fifth anniversary of the establishment of its current administrative structure (the Probation Board for Northern Ireland).

⁴ The committee published its report: *Report on the Protection and Welfare of the Young and the Treatment of Young Offenders (1938)*. The committee was chaired by Sir Robert Lynn, and the report is more commonly referred to as the 'Lynn Report'.

for Home Affairs (O'Mahony and Chapman, 2007). However, the outbreak of war put a hold on developments and further legislation was not enacted until the *Probation Act (Northern Ireland) 1950*. In 1950 the Ministry for Home Affairs took on responsibility for probation and in the following years the numbers of people subject to probation supervision expanded but remained at relatively low levels (Fulton & Carr, 2013).

Until the mid-1960s probation remained the only supervised community sentence available to the court. The *Treatment of Offenders (Northern Ireland) Act 1968* provided a legislative basis for the post-release supervision for long-term prisoners and in 1976 the community service order, as an alternative sanction to imprisonment was introduced⁵. The Northern Ireland legislation was modeled on the *Criminal Justice Act 1972* (England and Wales). Described by one commentator as representing 'a smorgasbord of penal purpose' (Thorsvaldson 1982 cited in Pease 1985:57), the legitimization for the community service order was provided in light of its reparative veneer and the fact that it was a cheaper sanction than imprisonment (Pease, 1985). The impetus for the introduction of this measure in Northern Ireland appears to be a direct effect of policy transfer.

Until the early 1970s community based sanctions remained a relatively under-developed part of the criminal justice system. This was in part related to the institutional structures. The administration of probation came under the remit of the Ministry of Home Affairs and probation officers were employed as civil servants. As this respondent, who joined the service under a graduate trainee scheme in the 1970s, described it, the organization was considered relatively staid and conservative:

In those days the Probation Service was pretty under-developed, and when I got a job they would have pulled anyone off the street if they had a degree. You know, in those days probation officers were sort of people who had been either good Protestants or good Catholics, you were recommended by the church... it was very conservative. It was very much civil service... (PH01)

⁵ *The Treatment of Offenders (Northern Ireland) Order 1976*.

At this time, the probation officer's role was still traditionally aimed towards 'advising, assisting and befriending' and the typical clientele referred by the courts were young people and persistent offenders involved in relatively low-level offending:

There wasn't a lot of offending behaviour work or anything, it was just – what's your problem, how can we help? You were advising, assisting and befriending in those days...I would have had mostly probationers and mostly young ones. (PHI01)

The courts saw us, when they put someone on probation the idea was that we would help that person stay out of trouble, and that was in the [in] the '60s and the beginning [of the] '70s. (PHI02)

As the testimonies of probation officers who served in this period illustrate, the role and function of probation was largely framed in penal-welfarist terms (Garland, 1985). There was recognition of need and provision of help but little emphasis on the 'diagnosis' of causal factors or engagement with the person's offending per se. Probation as a penal sanction was a somewhat marginal endeavour reserved for young people and less serious offending.

PROBATION AND THE POLITICAL CONFLICT – 'NEUTRAL AND USEFUL'

The emergence of a new generation of professionally trained staff in the 1970s and the escalation in civil and political conflict marked a critical turning point in the development of community sanctions and measures in Northern Ireland. Perhaps somewhat paradoxically during the periods of most intense violence, probation established a presence in communities, which were considered no-go areas by other criminal justice agencies (Carr and Maruna, 2012). This was linked to the neutrality stance adopted by staff and advanced through their union, the National Association of Probation Officers (NAPO), and through the focus placed on community-based work, which was initiated and supported by the new generation of staff. This respondent who worked as a probation officer during this period explains:

...one of the things I thought from a community perspective was that people like probation officers should be visible. Whereas most probation work as you know is invisible. It's in offices and stuff. I wanted to be seen and known as the probation officer of the area, and so I would have gone to community meetings and resident meetings and things like that and would have done a lot of things like at difficult times of year, would have hired a mini-bus to take groups of kids, not all of whom would have been on probation, but maybe brothers or sisters. So I think what I thought was that we need to be seen as being useful, not as sort of clinical practitioners but as a resource to the community, and it wouldn't have just been me that did that. So I think that that as we go on, I think that that was an important thing was that we were sort of neutral politically we didn't take a stand sort of one way or the other. Now, there's problems with that as well as advantages, but also that we were useful. It was important to be seen to be useful. (PHI01)

This sense of having a visible presence and being useful was important in achieving legitimacy in communities that were experiencing high levels of violence and in which criminal justice agencies were viewed with mistrust. The 'neutrality' stance adopted by probation was initially motivated by the introduction of mandatory sentences under 'Emergency' legislation⁶ for young people involved in 'riotous behaviour'. However, as this respondent outlines this crystallized into a position where probation officers would not work with individuals involved in 'politically motivated' offending in anything other than a voluntary capacity:

...the Tory government at that time, introduced legislation that anyone who was arrested for riotous behaviour, there was lots of rioting going on and a lot of young people were getting involved, would get a - month Borstal sentence, it was Borstal in those days. Automatic, mandatory, it was a bit like you hear about knife crime, you get a mandatory, it was the same idea. So there was a mandatory sentence, but the law also said that if you were a juvenile you had to have a Social Enquiry Report prepared by a Probation

⁶ The enactment of 'Emergency Provisions' legislation outlawed membership of 'prohibited' organizations, and provided for summary conviction for imprisonment for a range of associated offences. Northern Ireland (Emergency Provisions) Act, 1973; Northern Ireland (Various Emergency Provisions) (Continuance) Order, 1974.

Officer. So we would be going out and doing social background etc. knowing that this guy is going to get 6 months, so we just said – this is stupid. Now at first it was just a contradiction – this is stupid, what's the point? But then we sort of started to debate it within the union and realised that there were sort of some principles about this that we were being asked to treat people who were breaking the law out of political motivation and we were asked to sort of pathologise in some way this sort of behaviour; to see it as a sort of personal issue, a personal problem. And that led us on to think that there was something unethical about assessing and supervising people on statutory orders who were committing offences out of political reasons. That brought us into conflict then with the law and with the courts. But we went to the national union, it became national policy because obviously occasionally Irish people were being arrested in England for politically motivated [crimes], and it would have been adults as well so it would have been issues like parole supervision, so it became a national policy [in the National Association for Probation Officers – which served England, Wales and Northern Ireland].

(PHI01)

The stance on politically motivated offending grounded in a clear principle also had more pragmatic effects. It meant that unlike other criminal justice workers (such as the police or prison officers), probation staff were not considered 'legitimate targets' by paramilitary organisations and no probation officer was killed in the course of the conflict. Other areas of the criminal justice system had been mobilised in an attempt to contain the conflict (e.g. the prisons were used for internment without trial) (McEvoy, 2001). However, given its more liminal role, probation was more 'off the radar' and its 'neutral' and 'useful' position meant that it could function in what was a highly dysfunctional context:

...we were a bit sort of off the radar, we weren't that important. So obviously you had you know judges, police officers, prison officers, magistrates were all getting killed. So I think we were saying, and obviously what you had in those

days was the Diplock Courts⁷, the whole criminal justice system was being adjusted to deal with serious political offences, the courts, the police were adopting new approaches, the courts were, the prisons obviously were, so everybody were adapting to this political situation. And I suppose we thought that if we kept working with politicals eventually our practice would become much more oriented towards that and therefore that would not only be unethical, but dangerous. So I think going back to that earlier point about it being useful, I think that our strategy during the Troubles was (a) we're neutral and (b) we're useful. (PHI 01)

The motion regarding 'politically motivated offending' was brought by the Northern Ireland Branch to NAPO's Annual National Conference in 1975, where it was passed and became a national policy. The role of the NAPO branch in Northern Ireland during this period was critical; according to a number of respondents it provided leadership and a rallying point for staff and an outlet for the newer generation of graduates.

I would say in many ways NAPO managed probation, the union was very strong, all of the bright people were in NAPO. The managers were old dinosaurs, who were civil servants so the bright people were in NAPO and we had a huge amount on influence. (PHI 01)

NAPO also acted as a bulwark when the Northern Ireland Office placed pressure on probation staff to acquiesce on their stance, going so far at one point to threaten to fire probation staff:

...the Northern Ireland Office⁸ [who] refused to accept that we needed to act and work in a different way *even* as they saw the prison service being

⁷ Diplock Courts refer to non-jury courts, which were introduced in Northern Ireland under Emergency Legislation in 1973 for certain scheduled offences (i.e. terrorist related offences). They are named after Lord Diplock, who chaired the parliamentary commission that proposed their introduction to counter potential 'fear of intimidation' of jury members by paramilitary organisations (*Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland, 1972*).

⁸ The Northern Ireland Office (NIO) was established following the imposition of 'Direct Rule' in 1972. Direct rule of Northern Ireland affairs by Westminster was initially viewed as a temporary measure (McKittrick and McVea, 2001). Led by the Secretary State for Northern Ireland, the Northern Ireland Office retained its primary role until the re-establishment of a local legislature following the Belfast (Good Friday) Agreement. It retained

colonised into being anti-terrorist and fighting a war. But it was a matter of whether the organisation could exist or not because we had to have the confidence of the community of going about our business. (PHI 02)

In a curious way therefore the political conflict provided a creative space for probation to develop during this period. Its adaptation was to try to be 'useful' and this 'usefulness' was to be present in local communities and to provide practical assistance where possible. In this way the Probation Board invoked neutrality as a powerful legitimating discourse within communities and civil society. In so doing it distinguished itself from other parts of the criminal justice system. In practical terms this involved providing assistance where possible, including diverting young people from areas at times of high tension – for example through the provision of outward bound activities:

... I think there would have been a lot of talk about IT, intermediate treatment⁹ and I remember there was a lot of people going over to Liverpool for focus on football and that. It was a very male-dominated then but the idea was again you had the Troubles and internment it was about trying to help divert young people away. (PHI08)

At times the role also involved providing assistance to young people who were under paramilitary threat. In some cases this involved facilitating young people leaving Northern Ireland to avoid punishment beatings or shootings¹⁰. As one probation officer recalled it, 'paramilitaries' shootings and beatings, paramilitary punishments

responsibility for policing and justice powers until 2010, when these powers were devolved to the local legislature.

⁹ Intermediate Treatment was a term used in this period to describe work with young people outside of the custodial setting. The objective of intermediate treatment was articulated as 'seeking to improve the quality of life through providing community based opportunities' (Powell, 1982:573) Much of what was commonly delivered was activity based rather than specifically focussed on offending.

¹⁰ Historically, in Republican communities, punishment beatings, exiles, shootings and executions involved the regulation of behaviour in the absence of an accepted form of policing. During the course of the conflict, paramilitary 'policing' of communities was linked to a legitimacy deficit in state administered criminal justice (Feenan, 2002; Monaghan, 2004). In Loyalist communities, the emergence of paramilitary regulation from the early 1970s was initially viewed as an adjunct or assistance to the police. However, over time particularly with a growing sense of disenfranchisement within working class Loyalist communities, the role of paramilitary 'punishments' has similarly been linked to deficits in state legitimacy (Monaghan, 2004).

were just part and parcel of working' (PHI 09), particularly with young men involved in car crime.

In the accounts of probation officers who worked during the periods of most intense political conflict, these exceptional circumstances generated the possibility for innovations that may not have occurred otherwise. As this respondent puts it, while neutrality provided a 'space' the political context also provided a 'camouflage' that allowed for innovation and resistance within probation:

So I think that sort of political neutrality gave you space to do that and also the fact that the camouflage of being in Northern Ireland meant that some of the more reactionary, in my opinion, stuff that was coming from England could be blocked, and we could sort of say, that doesn't work over here, we're different. (PHI01)

COMMUNITY AND CONTINGENT LEGITIMACY

The community-based aspect of probation practice in Northern Ireland, which developed in the 1970s and 1980s, was also linked to the development of community governance structures in areas that were bearing the brunt of the Conflict. A range of community groups established in this period and funded through various initiatives provided a network for probation to link in with and to support.

Lord Melchett was ...one of the Ministers of State and this must have been, I would say, sometime in between '78 and '82/'83, around about then, he came in and we had 'Making Belfast Work' initiative and because we worked in communities like that we were seen as people who had something to contribute... It was a whole political thing but nevertheless you were contributing. You think you were contributing very importantly so you had that kind of community development strand, that kind of community involvement which I think served us well. (PHI 04)

The voluntary sector was also strong with organisations such as Extern, the Quakers and NIACRO (Northern Ireland Association for the Care and Rehabilitation of Offenders), playing important roles (Fulton and Parkhill, 2009). At the risk of

painting a somewhat romanticised version of probation's role during this period, it is important to note, however, that probation's presence within some communities was contingent on the approval of paramilitaries. While one could argue that this was a particular sort of legitimacy, it also meant that the capacity to challenge activity such as paramilitary punishments of young people accused of involvement in offending or anti-social behaviour was muted. To take a position on such issues was to risk taking a political stance, and to risk 'crossing the line' in terms of neutrality.

... I think a lot of us, some went through the Troubles with those sort of unspoken rules that you couldn't make public or explicit but you knew that if you got on the wrong side of the paramilitaries seriously you couldn't do the job you wanted to do. You would have to retreat back into a big office in the centre of town and get people to come down from Anderstown to see you, whereas we had an office in Anderstown, an office in the Falls¹¹.

(PHI01)

The dividend of being able to function and to be present in communities necessitated such adaptations, but the price was that some of the sectarian hatred that fuelled the hostilities was not addressed. Probation was avowedly non-sectarian (as was reflected in the composition of its workforce)¹², but it was not *anti*-sectarian as this probation officer outlines:

... we realised that by taking a non-sectarian stance, it was hard to take an anti-sectarian stance. It's like being non-racist rather than anti-racist, you know the only thing I would be proud of you know was I believe that the Probation Service wasn't sectarian. But it was passively non-sectarian as opposed to actively non-sectarian. If you know what I mean? (PHI01)

The grounding of probation in communities that occurred in this period, also informed changes to its administrative structures. In 1979 the government appointed a *Children and Young Persons Review Group* to consider the delineation of

¹¹ Anderstown, a Belfast suburb, and The Falls Road in West Belfast, are communities which experienced a high degree of violence during the Troubles.

¹² Unlike other agencies within the criminal justice system probation was notable for the equivalent representation of Catholics and Protestants in its workforce.

child welfare and justice services and the future organizational structure of the Probation Service¹³. The report of the review (more commonly referred to as the *Black Report*), recommended the establishment of a community-based board to manage probation. The Northern Ireland Office would retain budgetary responsibility for probation, but the new structure would operate at a distance allowing for a greater degree of autonomy and more community involvement:

...if the Service is to enjoy fully the confidence of the community, which will be essential if it is to carry out its work successfully, we consider that this can be better achieved if the community participates directly in the management of the Service (*Report of the Children and Young Persons Review Group, 1979:53*).

This recommendation eventually led to the enactment of the *Probation Board of Northern Ireland (Order) (1982)*, which established probation as a Non-Departmental Public Body (NDBP). The Board which was appointed from the community, led by a Chairperson and Deputy Chair and comprising of (10-18) board members directly employed probation staff, meaning that probation officers now became public servants rather than civil servants (Fulton & Parkhill, 2009). However, the core duties of the probation officer as set out in the 1982 Order remained largely unchanged from those articulated in the *Probation of Offenders Act (1907)*¹⁴:

- (a) to supervise the persons placed under their supervision and to advise, assist and befriend those persons;
- (b) to enquire in accordance with any direction of the court into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method for dealing with him, and

¹³ The Review Group were appointed in 1976 by the Minister of State for Health and Social Services to review legislation and services relating to the care and treatment of children and young persons under the Children and Young Persons Act (Northern Ireland) 1968, the Adoption Act (Northern Ireland) 1967 and the Probation Act (Northern Ireland) 1950 'taking into account developments in these fields in Great Britain' (Report of the Children and Young Persons Review Group, 1979:1). The reason that the role of probation was considered in a report that focused primarily on young people was because work with young people appearing before the courts including the provision of assessment formed a 'substantial part' of probation's role at this time (1979:52).

¹⁴ And other preceding legislation: *Probation Act, Northern Ireland (1950)*

- (c) to perform such other duties as may be prescribed or imposed by or under any statutory provision or as the Probation Board may direct.

(Schedule 4, Probation Board of Northern Ireland Order, 1982)

The establishment of the Board and the development of new administrative structures represented a new era for probation. While continuing its community-based role, it further developed this base by providing funding for a range of local organisations and partnerships. Notably a fifth of probation's entire budget was directed towards such initiatives during this period (O'Mahony and Chapman, 2007). Significantly by 2009 this proportion had reduced to just 7% (McCaughey, 2009). A focus on group-based approaches, at times responding to specific concerns (such as joy-riding) (Chapman, 1995), led to the development of programmes that were precursors to the emergence of a stronger focus on evidence-based practice (Chapman and Hough, 1998). Indeed one of the earlier programmes developed by probation in Northern Ireland – STAC (Stop Think and Change), was highlighted as an exemplar in the review of effective offender supervision by the probation inspectorate of England and Wales (Underdown, 1998).

CONFLICT TRANSFORMATION and POLICY EMULATION

During the 1990s the role of the Probation Board expanded with the introduction of new legislation and the organization's future role was considered in a review of the criminal justice system undertaken as part of the peace process. The *Criminal Justice Review (2000)*, which followed from the *Belfast (Good Friday Agreement)* in 1998 considered all aspects of the criminal justice system (with the exception of policing which was dealt with in a separate report)¹⁵, including the courts, youth justice, probation and prisons. Its recommendations led to the establishment of a separate service to administer the youth justice system and the introduction of a restorative justice model as the primary response for dealing with youth offending (Doak and O'Mahony, 2011). While probation retained responsibility for certain categories of

¹⁵ Policing was dealt with separately in the *Patten Report (1999)* and its recommendations led to the disbandment of the Royal Ulster Constabulary (RUC) and the formation of a new police force – the Police Service for Northern Ireland (PSNI) (Ellison and Mulcahy, 2001). The fact that policing was considered separately reflected the contentious nature of this area.

young people, (i.e. a small number made subject to probation orders or community service orders), its role in working with young people had become much more marginal.

Legislation establishing a separate Youth Justice Agency and placing restorative justice within a statutory framework as the primary response to youth offending was enacted in 2002. The restorative based youth-conference model adopted in Northern Ireland was a direct response to the legitimacy deficit in the administration of justice in the period of Conflict (Doak and O'Mahony, 2011). While not without its difficulties (for a discussion see McAlister and Carr, 2014), it has been hailed as an international success (Jacobson and Gibbs, 2009). It is notable that while restorative justice has formed a central underpinning rationale and legitimating discourse for the *youth* justice system, it has not received anywhere near such currency within the adult criminal justice system, specifically in relation to community sanctions and measures. Some possible reasons for this include the marginalisation of PBNi's role with young people and the move towards work with 'higher risk' offenders.

From the 1980s and onwards probation had reoriented its work more towards adults. The introduction of key legislation expanded its mandate (*Criminal Justice (Northern Ireland) Order, 1996*), and saw more 'hard end' or serious offending coming under its remit. The account below reflects this shift and also notes that work in which probation had previously been centrally involved had increasingly been devolved to voluntary sector agencies:

The end of the work which a lot of us we felt was very useful was the kind of advocacy... It's now done by the voluntary sector so we kept the hard end of the job and all the very nice bits went to the voluntary sector so they do.... I'm sure it's not nice all the time, but you know what I mean, they do all the floating support, all that personalised support, and all that has gone to the voluntary sector and that may well be that's the right way, but it has meant that people have much more now...and of course it had to be, and of course big, big change to dealing with adult offenders. (PHI 04)

Reflecting this changing role, the *Criminal Justice (NI) Order (1996)* marks a shift in the orientation of community sanctions and measures in this period. The legislation articulates that community sentences such as probation should serve a rehabilitative function but with the underpinning aim of 'protecting the public from harm'¹⁶.

Framed in these terms the individual is the locus of intervention, but the wider public is also the potential benefactor. The concept of 'community' which provided an important legitimating discourse for PBNi as a penal-welfarist organization now becomes a more diffuse 'public'. And as others have noted, invariably the offender subject is out-with this 'public' who are in need of protection (Nash, 2000; Robinson & McNeill, 2004).

This shift in emphasis on the role of community sanctions in Northern Ireland in the mid-1990s, parallels developments in England and Wales, where the traditional focus aimed at the rehabilitation of the individual had come under sustained criticism for a variety of reasons, including whether such endeavours were proportionate or effective (Mair & Burke, 2012; Robinson, et al 2013). Whereas probation in Northern Ireland cannot have been said to have experienced 'a collapse of a rehabilitative ideal' - largely because rehabilitation had not been a dominant discourse within a society and a criminal justice system that was beset by violent conflict - this movement towards a more risk focused, public protection role was clearly influenced by wider penal trends. These developments also coalesced with a period of conflict transformation and the consequent changing dynamics of political authority and questions regarding the proper role of a functioning state.

The *Criminal Justice Review (2000)* also considered community sanctions and in particular the relationship between the Prison Service and the Probation Board. As part of its deliberations it explored the possibility of greater integration between the Northern Ireland Prison Service (NIPS) and the Probation Board under a unified

¹⁶ The legislation outlines that the purpose of supervision on a probation order as follows: ...the supervision of the offender by a probation officer is desirable in the interests of — (a) securing the rehabilitation of the offender; (b) protecting the public from harm from him or preventing the commission by him of further offences. (Part 10, 1, Criminal Justice Order (NI), 1996)

'correctional service' (Blair, 2000). This was informed by developments in England and Wales. In 1998 the Home Office had published a report, *Joining Forces to Protect the Public*, which had advocated closer cooperation between prisons and probation and which prefigured the influential *Carter Report (2003)* which led to the establishment of the National Offender Management Service (NOMS) (Mair and Burke, 2012). In Northern Ireland, however, such an amalgamation was not considered possible, one of the main obstacles being that the prison service would be required to undergo its own reforms and restructuring in the post-conflict era. As the Review Report observed:

...there is a very real danger that the Prison Service with its larger staff, larger budget and higher profile would tend to dominate ... We would be concerned that the community ethos and credibility achieved by the Probation Service might be put at risk if such an amalgamation took place ... (*Criminal Justice Review*, 2000: 304)

Pointing to the credibility (or legitimacy) achieved by the Probation Board based on its grounding in the community, the contrast made with the prison system, while perhaps not directly intended, is evident. The prisons, having been 'colonised into being anti-terrorist and fighting a war' (PHI02), had become highly contentious battlegrounds over the course of the Troubles (McEvoy, 2001). The policy of 'criminalisation' - i.e. the denial of political legitimacy through the removal of 'special category' status for prisoners convicted of conflict related offences (Gormally et al, 1999) - pursued in the prisons from the mid-1970's until 1981, directly contrasted with the route taken by probation. And it had led to devastating effects. Ten men died on hunger strike in the Maze/Long Kesh prison in protest (Beresford, 1987). And between 1974 and 1993, 29 prison officers were killed by paramilitaries¹⁷.

¹⁷ Following the ceasefires of the main paramilitary organisations (in 1994) one prison officer has subsequently been killed. In 2012, David Black, a prison officer was murdered on his way to work. His murder has been attributed to dissident Republicans: <http://www.theguardian.com/uk/2012/nov/12/david-black-new-ira-prison-officer>

Prisoners convicted of conflict-related offences were released as part of the peace agreement secured in 1998 (McEvoy, 1998), and this process was well underway by the time the Review reported. The need for the prison service to downsize and become reoriented towards a less securitised model was noted by the Review and this formed part of the rationale for its conclusion that an amalgamation of probation and prisons was not feasible. The desirability of a closer working relationship between these two agencies was, however, articulated and as O'Mahony and Chapman (2007:171) observe, the Criminal Justice Review 'signalled the intention of the government to take a stronger lead in criminal justice policy than previously.'

POST-CONFLICT – A NEW 'NORMAL'?

The period of the transition from conflict has seen an ongoing process towards 'normalisation' of the criminal justice system. Here the use of this term is understood to mean that the focus has increasingly turned towards tackling 'ordinary' offending rather than conflict containment¹⁸. This is not intended to downplay the significant legacy issues that remain in the post-conflict era, including continued paramilitary activity and ongoing difficulties within the prisons (Owers et al, 2011; CJINI 2013a, b; Horgan, 2013), but rather to convey the overall shift in emphasis within the criminal justice system. As mentioned previously, for the PBNI this process had begun with the introduction of the *Criminal Justice (Northern Ireland) Order (1996)*, which saw a movement towards a public protection function. Further legislation introduced in the 1990s and 2000s relating to the management of sex offenders, domestic violence offences and the release of life-sentenced prisoners further underlined this shift¹⁹.

With the expansion of PBNI's role and the increased emphasis on risk and public protection greater attention was paid towards standardization and systemization. The introduction of practice standards by PBNI in 2000 set out guidelines for the

¹⁸ This echoes the term 'ODC' (Ordinary Decent Criminals) used to refer to the general offending population, i.e. those not convicted of conflict-related offences (Dwyer, 2007).

¹⁹ See for example: Sex Offender Act (1997); Sexual Offences Act (2003); Sexual Offences (Northern Ireland Order) 2008; Life Sentence (Northern Ireland) Order 2001; Family Homes and Domestic Violence (Northern Ireland) Order, 1998; Domestic Violence Crime and Victims Act (2004).

preparation of pre-sentence reports and supervisory arrangements for the various community sanctions supervised by the Probation Board. These 'core standards' have been periodically revised and have become increasingly expansive, detailing risk assessment practices, multi-agency interactions, breach processes etc. (PBNI, 2012). The rationale for the increased formalisation and proscription of practice has clearly been informed by a managerialist approach which has emphasized the need for greater accountability and efficiency but which has invariably led to increased bureaucratization.

Within PBNI this has also been influenced by a need to be accountable to the public whom it has an articulated responsibility to protect. Indeed in the Foreword to the practice standards, accountability and the public protection role are identified as reasons for expanding the reach of proscription (PBNI, 2006). The Foreword notes that the standards have been informed by a number of factors including:

... increasing demands for protection of the public from crime and its effects... the outcomes of four years of monitoring practice and periodic internal audits; a raft of recommendations which reflect the findings of successive external reviews and inspections.

(PBNI, 2006: i)

The public protection trope therefore serves an important legitimating role for probation both institutionally and symbolically providing a means to demonstrate utility, accountability and efficiency. Linking to the risk, need and responsivity model (RNR) of offender supervision which also gained currency in this period (Ward & Maruna 2007), it also provides an organising framework through which the work of community sanctions can be quantified and through which resources can be allocated (McCulloch & McNeill, 2007). Critically also it provides the means through which the organisation of probation must be accountable to its funder – the State.

While clearly representing an increased bureaucratisation of work, for some these developments signalled a 'coming of age' for PBNI and a greater relevance of the organization within the wider criminal justice system:

There are probably more systems, protocols and processes in place and in doing that we probably had to become quite sort of like at times it would probably have felt quite bureaucratic, but I think it needed it. It was like coming into the twenty-first century, we had to and also because of the changes in our own society and the influences from the national criminal justice and that system. (PHI07)

...I think that we have developed and matured greatly over the ...years that I can recall in it. The introduction of standards, the introduction of a process, our role within the criminal justice system, we are now very much central within the criminal justice system, no longer are there debates about getting a slice of the cake, getting reports written, I mean we are our role in looking at how we are working with sex offenders, high-risk offenders, domestic violence, victims, restorative justice... (PHI09)

The focus on higher risk offences manifest in increased attention paid towards sexual offending parallels the development of risk-based orthodoxies and similar governance frameworks in England and Wales (see McAlinden 2012). Multi-agency Sex Offender Risk Assessment and Risk Management Arrangements (MASRAM) involving probation, police, prisons and social services were introduced in Northern Ireland in 2001 (McAuley, 2010). These were superseded by Public Protection Arrangements Northern Ireland (PPANI), which were also given a legislative basis and their ambit was extended to include violent offences. The introduction of 'public protection' legislation (*Criminal Justice (Northern Ireland) Order 2008*), also mirrored legislation previously introduced in England and Wales (Bailie, 2008)²⁰. The 2008 Order introduced extended and indeterminate custodial sentences which allow courts to sentence a person to longer, or indeterminate periods in custody based on an assessment of 'dangerousness'. While such sentences are only applicable to certain categories of offences and the court must make the ultimate adjudication on 'dangerousness', such an adjudication is informed by the assessments submitted to the court by probation (amongst others). The establishment of a Parole

²⁰ Criminal Justice Act (2003)

Commissioners for Northern Ireland has also further involved PBNI in decisions about release from custody, emphasizing a risk management role and shifting more of probation's work towards post-custodial supervision²¹.

These shifts in the orientation of probation practice have been influenced by wider contexts that have led to penal expansionism both within prisons and in the numbers subject to supervision in the community. Facilitated by a prisoner release scheme, prison numbers declined markedly following the peace agreement (early 2000s), but have risen in recent years. A recent analysis of the growth in the Northern Ireland prison population between 2009 and 2013 links this to a higher number of custodial sentences, driven in part by greater numbers coming before the courts, an increase in sentence lengths and higher numbers of recalls to prison (DoJ, 2014a)²².

Data on probation in Northern Ireland also shows that the numbers of people subject to community sanctions and measures has risen markedly in recent years. The numbers of people subject to supervision on an annual date rose from 2969 at year end 2000/01 to 4468 in 2012/13, an increase of approximately one third²³. The breakdown in the numbers of people under the supervision of PBNI on 30th June 2014, included more than half who were subject to a community sentence (2591) and over a third who were the subject of a combined custodial/community sanction (1688), such as a Custody Probation Order (CPO), or a Determinate Custodial Sentence (DCS) (PBNI, 2014)²⁴. For example, a DCS allows the court to sentence a person to a period of imprisonment followed by a period of supervision in the

²¹ The Criminal Justice (Northern Ireland) Order 2008 also provided that the Life Sentence Review Commissioners (LSRC) established as an independent body following a recommendation of the *Criminal Justice Review (2000)*, be renamed the Parole Commissioners for Northern Ireland. Prior to the establishment of the Life Sentence Review Commissioners in legislation (Life Sentences (Northern Ireland) Order, 2001), a non-statutory body comprising of officials within the Northern Ireland Office had fulfilled aspects of this function. However, the advent of the Human Rights Act, 1998 and compliance with the European Convention of Human Rights entailed that each prisoner should be entitled to have his or her case reviewed periodically by an independent body.

²² The prison population in September 2009 was 1437; in September 2013 it was 1858 (DoJ, 2014a).

²³ Personal communication with PBNI, 27. 06.13

²⁴ There were 4,538 people subject to probation supervision on 30.06.14, in addition to those cited above, the remaining numbers constituted those on licences (including Life Licences and Sex Offender Licences) and those subject to 'Public Protection Sentences' i.e. Extended or Indeterminate Custodial Sentences. 27% of the Probation caseload were in custody, and probation's involvement pertained largely to pre-release work (PBNI, 2014).

community. The court specifies the length of both elements at the point of sentencing. This form of sanction has become increasingly popular, with numbers rising when compared with stand-alone community sanctions.

Determinate Custodial Sentences were introduced alongside public protection sentences in the *Criminal Justice (Northern Ireland) Order (2008)*. They have been legitimated on the basis of an offender/risk management approach, grounded in the rationale that the offender (as a risk bearer) should be managed throughout their time in prison and in their transition back into the community. The rise in the use of DCSs illustrates the attractiveness of melding prison and community disposals and suggests that rather than providing an alternative to custody, community punishment is increasingly seen as custody's adjunct. Recalls to prison and the shift towards greater numbers under post-custodial supervision further underlines the increasingly porous boundary between prison and community.

CONCLUSION

The administration and legitimation of community sanctions and measures in Northern Ireland have been profoundly shaped by the political context. Moving from a marginal position within the criminal justice system in the first half of the twentieth century, probation was viewed as an alternative to custody for 'redeemable cases'. In the 1950s the administrative arrangements for supervising probation orders were formalised. Probation officers were brought under the ambit of a government department and further legislation was enacted. During the period of most intense political conflict and anchored in a commitment to be 'neutral and useful', probation officers remarkably established a presence in communities. In the period of conflict transformation grounded in a new legislative mandate, the range of community sentences expanded, as did the organisation, which administered them. Probation officers continued their community-based presence but in a move towards more generalised legitimacy became increasingly focused on evidence-based practice, reflecting wider penal trends (McNeill and Robinson, 2013; Robinson et al, 2013).

While once a case could be made about the 'special' context of Northern Ireland as a block against some of the more negative vagaries of policy transfer, the move towards 'normalisation' has made this more difficult. As this former probation officer observes:

...gradually over the years in Britain, following on America, was the notion of our job was to control offenders in the community, almost to the extent now where people will talk about the sense of total supervision, prison in the community. Probation has moved with that. Again its a different discussion as to whether probation could have, whether that was right, and whether probation could have resisted that, but certainly the origins of being allowed by the courts to help offenders has become much more secondary to controlling the behaviour of offenders in the community... (PHI02)

In Northern Ireland, as in other countries, community sanctions and measures have served mutable purposes and have employed varying rationales over time – redemptive, rehabilitative and risk oriented. For reasons outlined at the outset, 'punishment' within the community has not featured as a legitimating discourse. Of course this is not to say that community sanctions and measures do not have a punitive effect marked by increasing strictures and the emphasis placed on public protection. The 'paradox of probation' (Phelps, 2013) in this context is that in the 'post-conflict' era, the numbers coming under the penal gaze - both in the community and the prisons - have risen exponentially in recent years. Here the boundaries between these sites of penalty have become increasingly porous. Changes in political authority evident in the re-establishment of a local legislature and the devolution of policing and justice powers to the Northern Ireland Assembly in 2010 point to a shift in the relationship between government and its citizenry.

However, is notable that under this new dispensation community sanctions and measures have been somewhat marginalised within a political discourse that has focussed on other aspects of the criminal justice system – notably prisons and the youth justice system, which have been the subject of two substantial reviews (Owers et al, 2011; Youth Justice Review, 2011). While the Prison Review noted areas for

further collaboration between the Prison Service and PBNI, its main focus was on the pressing need for prison reform in a system which, was criticised for being highly costly and overly securitised (Owers et al, 2011; CJINI, 2013a, b). In this context the contrast between prisons and more effective and cheaper community based sanctions, has fostered a penal reductionist legitimating rationale, advocating the greater use of community sanctions (CJINI, 2013c; DoJ, 2011, 2013), and calling for increased expenditure in this area (McCaughey, 2009, 2012).

However, the question of budgets remains a vexed one. Government spending on community sanctions remains comparatively low and further spending cuts have recently been announced (DoJ, 2014b)²⁵. In response the PBNI issued a statement warning that a reduced budget will negatively impact on public safety and reoffending rates (Patterson, 2014). Perhaps characteristically media coverage in response focussed on the 'threat' of unsupervised sex offenders²⁶.

As McNeill and Dawson (2014) note, changing political contexts undoubtedly shape the symbolic and material character of penalty. Despite the historically problematic and unsettled character of this particular State and the specific 'limits of sovereignty' within it (Garland, 1996), it is notable that within a new political dispensation attention is increasingly focussed towards offenders as a 'suitable enemy' (Christie, 1986). However, the perils of legitimisation of community sanctions via this route have been well documented and, for that reason, the position of community sanctions in Northern Ireland seems likely to remain insecure.

²⁵ In 2014-15 the budget allocation for PBNI was £18.4 million compared to £102.8 million for the Northern Ireland Prison Service (NIPS).

²⁶ BBC Northern Ireland: 11.12.14: 'Sex offenders: Probation Board for Northern Ireland issues warning on budget cuts.' Available at: <http://www.bbc.com/news/uk-northern-ireland-30427028> Accessed on: 19.12.14

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